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5 Attorney for Plaintiffs

6 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
7 PHOENIX DIVISION

8 Todd Heichel, Rudy Castro, Justin
9 Garmendia, Joshua Holgate and Randi
Pitts, Each Individually and on Behalf of
10 All Others Similarly Situated,

11 Plaintiffs,

12 v.

13 Tri City Transport, LLC, SWWOOP,
LLC, and Michael Butler,

14 Defendants.

NO. 2:22-cv-1513-SMM

**MOTION FOR DEFAULT
JUDGMENT**

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16 Plaintiffs Todd Heichel, Rudy Castro, Justin Garmendia, Joshua Holgate and
17 Randi Pitts, each individually and on behalf of all others similarly situated (collectively,
18 “Plaintiffs”), by and through their attorney Sean Short of Sanford Law Firm, PLLC, for
19 their Motion for Default Judgment, do hereby state and allege as follows:

20 1. Plaintiffs seek a default judgment against Defendants Tri City Transport,
21 LLC, SWWOOP, LLC, and Michael Butler (collectively, “Defendant” or
22

1 “Defendants”), in the amount of \$338,736.89, including \$112,912.30 in back pay plus
2 attorney’s fees and costs. *See* Declarations of Todd Heichel, Rudy Castro, Justin
3 Garmendia, Shavale Evison, Roscoe Butterfield, Karly Hernandez, Domingo Limon,
4 Cassidy Dorius, and Billy Durbin, attached hereto as Exhibits 1-9, respectively.

5 2. Plaintiffs seek a default judgment against Defendants in the amount of
6 \$20,053.10 for attorneys’ fees and costs. *See* Declaration of Josh Sanford, attached
7 hereto as Exhibit 10.

8 3. Plaintiffs filed their Original Complaint—Collective Action against
9 Defendants on September 8, 2022. *See* ECF No. 1.

10 4. Plaintiffs served Defendant Tri City Transport, LLC, and Defendant
11 SWWOOP, LLC with the Complaint and Summons via Certified Mail on June 13, 2023.
12 *See* ECF No. 30.

13 5. Plaintiffs served Defendant Michael Butler by publication, which ran
14 consecutively during the weeks of November 17, 2023, November 24, 2023, December
15 1, 2023, and December 8, 2023. *See* ECF No. 42.

16 6. Defendants’ deadline for filing and serving an Answer or Motion to
17 Dismiss has passed.

18 7. Defendants have not filed or served an Answer or Motion to Dismiss in
19 accordance with Fed. R. Civ. P. 12(a)(1). *See* ECF No. 30; *see also* Declaration of
20 Samuel Brown ¶ 4, ECF No. 42-1.

1 8. No extension for filing or serving a proper Answer or Motion to Dismiss
2 has been granted. *Id.* at ¶ 5; *see* ECF No. 30.

3 9. Defendant Tri City, LLC and Defendant SWWOOP, LLC, are not natural
4 persons, therefore they cannot be in active military service.

5 10. Defendant Michael Butler is not in military service, so 50 U.S.C. § 3931 is no
6 bar to entry of a default judgment against ant Defendant. *See* Declaration of Samuel
7 Brown ¶ 6, ECF No. 42-1.

8 11. On August 2, 2023, the clerk entered default regarding Defendants Tri
9 City Transport, LLC, and SWWOOP LLC pursuant to Rule 55 of the FRCP. ECF No.
10 32.

11 12. On February 23, 2024, the clerk entered default regarding Defendant
12 Michael Butler pursuant to Rule 55 of the FRCP. ECF No. 43.

13 13. Plaintiffs are entitled to Judgment by default against Defendants based on
14 the claims set forth in their Complaint, which alleged:

15 a. Defendant Michael Butler owns and operates Tri City Transport, LLC,
16 and SWWOOP, LLC, a unified operation in which the revenue generated from Tri City
17 Transport, LLC and SWWOOP, LLC are merged, managed, controlled, and operating
18 as a single enterprise in Arizona. ECF No. 1, at ¶¶ 12-21.

19 b. Defendants are subject to the FLSA because their annual gross volume of
20 sales made or business done is at least \$500,000.00, and it has at least two employees

1 who handle, sell, or otherwise work on goods or materials that have been moved in or
2 produced for commerce. *Id.* at ¶¶ 24,25.

3 c. Defendant Michael Butler took an active role in operating Tri City
4 Transport, LLC, and SWWOOP, LLC, and in the management thereof. *Id.* at ¶ 23.

5 d. Defendant Michael Butler in his role as an operating employer of Tri City
6 Transport, LLC, and SWWOOP, LLC, had the power to hire and fire Plaintiffs, often
7 supervised Plaintiffs' work and determined Plaintiffs' work schedules, and made
8 decisions regarding Plaintiffs' pay, or lack thereof. *Id.* at ¶ 22.

9 e. Defendant Michael Butler, at relevant times, exercised supervisory
10 authority over Plaintiffs in relation to their work schedules, pay policies, and the day-
11 to-day job duties that Plaintiffs' jobs entailed. *Id.* at ¶ 22.

12 f. Defendant employed Plaintiff Heichel from March 2022 until April 2022.
13 *Id.* at ¶ 28.

14 g. Defendant employed Plaintiff Castro from May 2022 until July 2022. *Id.*
15 at ¶ 29.

16 h. Defendant employed Plaintiff Garmendia from May 2022 until June 2022.
17 *Id.* at ¶ 30.

18 i. Defendant employed Plaintiff Holgate from August or September 2021
19 until November 2022. *Id.* at ¶ 31.

20 j. Defendant employed Plaintiff Pitts during the month of August 2022. *Id.*
21 at ¶ 32.

22

1 k. Plaintiffs were employed as “Drivers” and paid per mile driven. *Id.* at ¶
2 34.

3 l. Defendant misclassified Plaintiffs as independent contractors exempt
4 from the provisions of the FLSA and Plaintiffs were not paid an hourly or salary wage.
5 *Id.* at ¶¶ 23, 36.

6 m. Plaintiffs regularly or occasionally worked more than 40 hours per week.
7 *Id.* at ¶ 59.

8 n. Defendant did not pay Plaintiffs an overtime premium for hours worked
9 over 40 in a week. *Id.* at ¶ 60.

10 o. In some weeks, Plaintiffs worked so many hours that their constructive
11 hourly rate fell below both the federal and state statutory minimum. *Id.* at ¶ 61.

12 p. The per-mile pay Plaintiffs received did not include reimbursement for
13 mileage expenses at the IRS standard business mileage rate, therefore Plaintiffs “kicked
14 back” that amount to Defendants, creating additional minimum wage and overtime
15 violations. *Id.* at ¶ 62.

16 q. Defendant did not pay Plaintiffs all wages due when their employments
17 were terminated, nor within 7 days thereafter. *Id.* at ¶ 66.

18 r. Defendant willfully violated the provisions of 29 U.S.C. §§ 206 and 207,
19 by employing individuals engaged in commerce at an hourly rate less than the federal
20 minimum wage, by failing to pay one and one-half (1.5) times regular wages for all
21 hours worked over forty (40) in a week. *Id.* at ¶¶ 76-86.

1 s. Defendant willfully violated the provisions of A.R.S. § 23-363 for failure
2 to pay Plaintiffs a sufficient minimum wage under Arizona state law. *Id.* at ¶¶ 99-104.

3 t. Defendant violated the provisions of the A.R.S. § 23-353 by failing to pay
4 Plaintiffs, all wages and final compensation due upon termination of their employment.
5 *Id.* at ¶¶ 105-111.

6 14. With this Motion, Plaintiffs submit the following exhibits: Declarations of
7 Todd Heichel, Rudy Castro, Justin Garmendia, Shavale Evison, Roscoe Butterfield,
8 Karly Hernandez, Domingo Limon, Cassidy Dorius, and Billy Durbin (Exhibits 1-9,
9 respectively); Declaration of Josh Sanford (Exhibit 10); Billing Spreadsheet (Exhibit
10 11); and Costs Invoice (Exhibit 12) . Plaintiffs also file herewith and incorporate herein
11 a Brief in Support of Motion for Default Judgment.

12 WHEREFORE, premises considered, Plaintiffs respectfully request that this
13 Court grant this Motion in full; find that Defendant violated the provisions of the Fair
14 Labor Standards Act as alleged in Plaintiffs' Complaint; enter a default judgment against
15 Defendant in the amount of \$338,736.89; award Plaintiffs' counsel \$20,053.10 for
16 attorney's fees and costs; and for all other good and proper relief to which Plaintiffs may
17 be entitled, whether or not specifically requested herein.

1 DATED this 6th day of September 2024.

2 SANFORD LAW FIRM, PLLC

3 By: s/ Sean Short

Sean Short

4 10800 Financial Centre Pkwy, Ste. 510

Little Rock, AR 72211

5 *Attorney for Plaintiffs*

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